

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Utah Communications, LLC)	Facility I.D. No. 77512
Licensee of Station KPNZ(TV))	NAL/Acct. No. 0741420059
Ogden, Utah)	FRN: 0004336863

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: August 24, 2007**Released: August 27, 2007**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),¹ by the Chief, Video Division, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,² we find that Utah Communications, LLC (the “Licensee”), licensee of Station KPNZ(TV), Ogden, Utah (the “Station”), apparently willfully and repeatedly violated Sections 73.3526(e)(11)(i)-(iii) and 73.3526(e)(7) of the Rules, by failing to place in the Station’s public inspection file all required TV issues/programs lists, records concerning its compliance with the children’s programming commercial limits, Children’s Television Programming Reports, and EEO public file reports.³ Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of twenty thousand dollars (\$20,000).

II. BACKGROUND

2. Section 73.3526 of the Rules requires a commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.⁴ Subsection 73.3526(e)(11)(i) provides that a TV issues/programs list is to be placed in a commercial TV broadcast station’s public inspection file each calendar quarter. In addition, pursuant to subsection 73.3526(e)(11)(ii), each commercial television broadcast station is required to place in its public inspection file, on a quarterly basis, records sufficient to allow substantiation of the licensee’s certification, in its renewal application, of its compliance with the children’s television commercial limits imposed by Section 73.670 of the Rules.⁵ Moreover, as set forth in subsection 73.3526(e)(11)(iii), each commercial television licensee is required to prepare and place in its public inspection file a Children’s

¹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. §§ 73.3526(e)(11)(i)-(iii) and 73.3526(e)(7).

⁴ See 47 C.F.R. § 73.3526.

⁵ 47 C.F.R. § 73.670. This rule limits the amount of commercial matter that a commercial television station may air during children’s programming to 10.5 minutes per hour on weekends and 12 minutes on weekdays.

Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts that it has made during the quarter to serve the educational and informational needs of children. These subsections of Section 73.3526 require licensees to place TV issues/programs lists, records concerning commercial limits and Children's Television Programming Reports for each quarter in the station's public inspection file by the tenth day of the succeeding calendar quarter. Section 73.3526(e)(7) provides that an EEO public file report is to be placed in a TV broadcast station's public inspection file annually, on the anniversary of the date its renewal application is due to be filed. Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify the licensee's rule violation.⁶

3. On June 1, 2006, the Licensee filed its license renewal application (FCC Form 303-S) for Station KPNZ(TV) (the "Application") (File No. BRCT-20060601BIE). In response to Section IV, Question 3 of the Application, the Licensee stated that, during the previous license term, it had failed to timely place in its public inspection file all of the documentation required by Section 73.3526 of the Commission's Rules. In Exhibit 17, and in an August 9, 2007 amendment to the Application, the Licensee indicated that in January 2006, it discovered that its TV issues/programs lists were missing from the public inspection file for 24 quarters, virtually the Station's entire license term. The Licensee also reported that its records concerning its compliance with the children's programming commercial limits for five quarters and EEO public file reports for 2003-2005 were missing from the public inspection file. In addition, the Licensee stated that it placed in its public inspection file, and/or filed with the Commission, 14 Children's Television Programming Reports after the applicable deadline. The Licensee indicated that TV issues/programs lists had been prepared and placed in the public inspection file, but that these lists and a portion of other required documents were subsequently lost or destroyed. The Licensee maintained that it has recreated most of the missing records and placed them in the public file. The Licensee also asserted that it has implemented procedures to ensure future compliance.

III. DISCUSSION

4. The Licensee's failure to place in its Station KPNZ(TV) public inspection file all of the required documentation constitutes apparent willful and repeated violations of Sections 73.3526(e)(11)(i), 73.3526(e)(11)(ii), 73.3526(e)(11)(iii), and 73.3526(e)(7) of the Rules. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁷ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁸ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁹ and the Commission has so interpreted the term in the Section 503(b) context.¹⁰ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is

⁶ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

⁷ 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

⁸ 47 U.S.C. § 312(f)(1).

⁹ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁰ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

continuous, for more than one day.”¹¹

5. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for violation of Section 73.3526.¹² In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹³

6. In this case, the Licensee acknowledged that numerous required records were not retained in the public inspection file. Moreover, it appears that the Licensee did not discover these deficiencies until January 2006. As a result, the public file was missing several required documents for an extended period of time. Given the nature and extent of these acknowledged violations, we find that the Licensee is apparently liable for a forfeiture in the amount of \$20,000 for its apparent willful and repeated violations of Sections 73.3526(e)(11)(i)-(iii) and 73.3526(e)(7).

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission’s Rules, that Utah Communications, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twenty thousand dollars (\$20,000) for its apparent willful and repeated violation of Sections 73.3526(e)(11)(i)-(iii) and 73.3526(e)(7) of the Commission’s Rules.

8. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission’s Rules, that, within thirty (30) days of the release date of this *NAL*, Utah Communications, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229.

10. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the

¹¹ 47 U.S.C. § 312(f)(2).

¹² See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (“*Forfeiture Policy Statement*”), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹³ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁴

13. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Utah Communications, LLC, 150 North Wright Brothers Drive, Suite 520, Salt Lake City, Utah 84116, and to its counsel, Kevin P. Latek, Esquire, Dow Lohnes PLLC, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁴ See 47 C.F.R. § 1.1914.